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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) GC Docket No. 92-52
)
REEXAMINATION OF THE POLICY STATEMENT)
ON COMPARATIVE BROADCAST HEARINGS)
)

COMMENTS OF

WOMEN IN COMMUNICATIONS, INC.,
NATIONAL WOMEN'S LAW CENTER,
NOW LEGAL DEFENSE AND EDUCATION FUND,
PHILADELPHIA LESBIAN AND GAY TASK FORCE,
WOMEN'S BAR ASSOCIATION OF D.C.,
WOMEN'S INSTITUTE FOR FREEDOM OF THE PRESS,
WOMEN'S MEDIA PROJECT of the
COMMUNICATIONS CONSORTIUM MEDIA CENTER, and the
FEMINIST MAJORITY FOUNDATION

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SUMMARY

Women in Communications, Inc. and the other groups listed herein urge the Commission to retain the credit for female ownership in comparative hearings, as it has proposed in the Notice. While it may be separated from the integration and minority credits, all must be maintained, and applicants should be permitted to accumulate all preferences for which they qualify. Finally, because Congress has expressly forbidden the Commission to remove or weaken the female and minority preferences, it must re-enact both preferences.

The recent decision in Lamprecht is no bar, because it merely held that the record in that case did not support the granting of a preference. The Commission is free to establish a record in this proceeding which would render the preference constitutional. Furthermore, Lamprecht considered only one aspect of the Commission's broad goal of increasing viewpoint diversity, and relied on a study which looked mainly at radio station formats. Both Congress and the Commission have stated that the gender preference seeks not only to increase "formats" or "targeted" programming aimed at women audiences, but also to increase the variety of viewpoints reflected in news, public affairs, entertainment, and other general audience programming. In Metro, the Supreme Court upheld this broader purpose and

accepted the Commission's finding that a nexus existed between diversity of ownership and diversity of programming.

Empirical evidence demonstrates that women are underrepresented both in station ownership and in the broadcast media generally. In addition, evidence exists that increasing female station ownership will help achieve the constitutionally permissible goal of increased broadcast diversity. Thus, the Commission must use this proceeding to demonstrate the substantial relationship between the preference and the Commission's (original) goal of broad-based diversity. The combined effect of the Congressional and court mandates both require the Commission to use its power to re-enact the preference in a constitutional manner, and we urge it to do so.

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Women in Communications, Inc., the National Women's Law Center, NOW Legal Defense and Education Fund, Philadelphia Lesbian and Gay Task Force, Women's Bar Association of D.C., Women's Institute for Freedom of the Press, the Women's Media Project of the Communications Consortium Media Center, and the Feminist Majority Foundation hereby submit comments in response to the Commission's Notice of Proposed Rulemaking, In the Matter of Reexamination of the Policy Statement on Comparative Broadcast Hearings, Gen. Dkt. No. 92-52 (released April 10, 1992), 57 Fed. Reg. 14683 (April 22, 1992) [hereinafter Notice].

The Notice proposed to consider female ownership as a factor separate from integration. Notice ¶ 22. It notes that by making

female ownership a separate factor, the weight accorded that factor would not be changed: "The sole change would be that the . . . female owner would no longer need to be integrated into station management to receive comparative credit." Id. ¶ 24.

The Notice also mentions that the D. C. Circuit recently held that the gender preference was unconstitutional because the Commission had not shown that the gender preference was substantially related to achieving programming diversity. Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992); Notice ¶ 22 n.8. Thus, the Notice observed that "our discussion of the gender preference may require modification depending on the ultimate outcome of Lamprecht." Id.

We understand that no further court appeals of the Lamprecht decision are contemplated. Nonetheless, as elaborated below, we do not view the decision as barring Commission action to adopt a separate gender preference. The Lamprecht court found only that the Commission had not presented sufficient evidence to document the nexus between female ownership of broadcast stations and its goal of increased broadcast diversity, not that it could not do so. Thus, the Commission is fully empowered to render its policy constitutional, as we urge it to do. Indeed, this comment period allows the Commission to build a record which demonstrates the constitutionally required nexus between the female enhancement policy and the Commission's mandate to increase diversity.

I. THE COMMISSION SHOULD ADD A SEPARATE CREDIT FOR FEMALE OWNERSHIP

The Notice proposed to treat the gender preference as a separate factor from integration. Notice ¶ 22. We support establishing female ownership as a separate and distinct factor, whether or not the integration factor is eliminated.

The benefits from increasing female ownership of broadcast stations are not limited to situations where the women owners are managing the station on a full time basis. Even if the women owners are not involved in the day-to-day management of the station, it is likely that women will have input on other levels such as hiring and firing and establishing policies. Women may also be more likely to hire other women, thereby increasing the level of women's involvement in production, creative aspects of broadcasting, and other areas affecting programming.¹

Of course, if women owners also manage the station on a full time basis, they are likely to have an even greater impact on diversity. To reflect this greater impact in the comparative criteria, we urge the Commission to retain its present credit for integration, including the enhancement for female ownership, in addition to a separate bonus for female ownership that is not contingent on integration. In the alternative, should the Commission decide to eliminate the integration factor, it should adopt a separate factor for female ownership, and enhance the

¹ For example, in an analogous development, we note that the first woman appointed as Chief of the Common Carrier Bureau has appointed a number of other women to high-level positions in the Bureau.

importance of that factor when the female owners commit to personally manage the station.

For similar reasons, we also support making minority ownership into a separate factor, regardless of integration.² The Commission should also clarify that applicants who are both minority and female should be entitled to both preferences, in light of their substantial underrepresentation and ability to contribute a distinct perspective to the airwaves.³

The continued use of the female ownership credit does not permit significant potential for abuse. See Notice ¶ 22 n.10. If anything, the incentive to set up a two-tiered applicant to take advantage of the gender preference is less than for other factors, because of the lesser weight afforded female ownership than minority ownership and diversification. Moreover, reforms recently implemented in Dockets 90-263 and 90-264 should eliminate incentives for filing sham applications in comparative hearings. To the extent that these reforms are not sufficient,

² See Comments of Black Citizens for a Fair Media, et al. We also strongly endorse their suggestion that the Commission add a mandatory service continuity requirement.

³ Although this appears to be the Commission's current practice, it has not clearly stated its policy on this issue. See, e.g. Waters Broadcasting Corp., 91 F.C.C.2d 1260 (black women entitled to "substantial enhancement"); aff'd sub nom West Michigan Broadcasting Co. v. F.C.C., 735 F.2d 601 (D.C. Cir. 1984), cert. denied, 470 U.S. 1027 (1985); WRLJ, Inc., 99 F.C.C.2d 460 (Rev. Bd. 1984) (black woman given substantial enhancement over white female applicant).

the Commission has other options for detecting and deterring abuse.⁴

II. THE COMMISSION'S FEMALE OWNERSHIP ENHANCEMENT IS SUBSTANTIALLY RELATED TO THE IMPORTANT GOVERNMENTAL OBJECTIVE OF INCREASING DIVERSITY.

Reinstatement of the gender preference is in the public interest because, as the Commission, Congress, and the Supreme Court have all held, diversity of ownership necessarily leads to diversity of programming, regardless of whether it takes the form of "women-oriented" programming. It is clear that women are severely underrepresented in station ownership and top management, and that they bring unique interests, views, values, and concerns to the broadcast media. Both common sense and social science research support the conclusion that female licensees bring distinct and different perspectives to the airwaves than do males. Thus, we urge the Commission to redefine the governmental objective at stake here. By amending its definition of viewpoint diversity to include women's voices, and reinstating the female preference factor as a means of achieving that goal, the Commission can better serve both women audiences

⁴ If the Commission is concerned that a man who is the real party in interest might file an application in his wife's name to take advantage of the gender credit, we note that the Commission now requires all applicants to disclose any media interests of their spouses, and reserves the right to request additional information. Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd 1920, 1923 (1992). Just as the Commission is able to determine whether other media interests should be attributed to spouses, it can discover whether a husband is the real party in interest and take appropriate action.

and the public at large, and move toward its long-term goal of diversifying media ownership.

A. THE LAMPRECHT DECISION EXAMINED ONLY PROGRAMMING SPECIFICALLY TARGETED TOWARD FEMALE AUDIENCES, AND FAILED TO CONSIDER THE BROADER GOAL OF INCREASING VIEWPOINT DIVERSITY.

Lamprecht held that awarding a license using the female enhancement credit was unconstitutional because no evidence in the record demonstrated a nexus between female ownership and diversity of programming. Lamprecht v. FCC, 958 F.2d 382 (1992). The majority opinion acknowledged that "the promotion of diversity of viewpoints in general qualifies as an 'important' objective within the government's power" Id. at 391 (emphasis added) (citing Metro Broadcasting v. FCC, 110 S.Ct. 2997 (1990)).

However, the opinion did not evaluate whether the female preference does in fact foster such diversity. Instead, it focused on whether the preference resulted in programming narrowly targeted at women.

Implicit in the government's judgment are at least three assumptions: first, that there exists such a thing as 'women's programming'...; second, that these distinct types of programming are underrepresented on the airwaves; and third, that women who own radio or television stations are likelier than white men to broadcast these distinct types of programming.

Id. at 395 (emphasis added). While "th[is] distinct type of programming" may represent one aspect of "diversity of viewpoints in general," it was never intended to supplant the Commission's

actual, and far broader, goal of viewpoint diversity.⁵ Conspicuously absent from the record is any mention that the governmental objective of the gender preference was only to increase "women's programming." By requiring a quantifiable nexus between the gender preference and "women's programming," the D.C. Circuit went beyond what either Congress or the Commission had sought to achieve with the gender enhancement credit.

However, Lamprecht does not bar the Commission from reinstating the gender preference, and does not force it to prove a statistical link between female ownership and some fixed amount of "women's programming" to do so.⁶ Instead, the Commission need only clarify that the permissible objective of the policy,

⁵ See Minority Ownership of Broadcast Stations: Hearing Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transp., 101st Cong., 1st Sess. 78 (1989) (Commission representative testified that no specific definition of 'female programming' was necessary because "[t]he purpose of the female preference is to increase female ownership in order to promote viewpoint diversity." (emphasis added). See also 135 Cong. Rec. H7644 (daily ed. Oct. 26, 1989) (discussing appropriation rider); 135 Cong. Rec. S12,265 (daily ed. Sept. 29, 1989) (same) (intent to improve service to all audiences, including female and minority groups); Matthew L. Spitzer, Justifying Minority Preferences in Broadcasting, 64 S. Cal. L. Rev. 293, 330 (1991) (discussing Congressional intent).

⁶ In fact, the attempt to define and quantify women-oriented programming might itself entangle the Commission in perpetuating archaic stereotypes. For example, some might define it as only soap operas, cooking tips, and programs about child care. As Chief Judge Mikva argued in his impassioned dissent, to require women-owned radio stations to program only "soft, 'feminine' music" in place of country or rock-and-roll music is absurd, and was never Congress' intent. Lamprecht, 958 F.2d at 414 (Mikva, C.J., dissenting). See also Spitzer, supra n. 5 at 330 (discussing difficulty of defining "women's programming.")

that is, increasing overall diversity, and establish a factual record demonstrating that the credit bears a substantial relationship to achieving that goal. It is rational to assume that increased female ownership of broadcasting stations will result in increased general audience programming across the board which better reflects women's viewpoints, even if those viewpoints may themselves be diverse and difficult to quantify.

By reinstituting the gender preference on a constitutional basis, the FCC would also be acting in accord with the direction of Congress, which has expressly barred the Commission from expending any funds

to repeal, to retroactively apply changes in, or to continue a reexamination of the [Commission's] policies . . . to expand . . . women ownership of broadcasting licenses, including those established in . . . Mid-Florida Television Corp., 69 F.C.C. 2d 607 (Rev. Bd. 1978) . . .⁷

This language suggests that the Commission may not "modify" the preference except to reinstate it in a constitutional manner. Since the Commission must comply with both the Congressional command to retain the policy, and the D.C. Circuit's mandate to apply it constitutionally, it has no choice after Lamprecht but to reaffirm its policy and render it constitutional, by

⁷ Continuing Appropriations Act For Fiscal Year 1988, Pub. L. No. 100-202, 101 Stat. 1329, 1331 (1987). See also Departments of Commerce, Justice & State, the Judiciary and Related Agencies Appropriations Act, 1989, Pub. L. No. 100-459, 102 Stat. 2216 (1988); Departments of Commerce, Justice & State, the Judiciary and Related Agencies Appropriations Act, 1990, Pub. L. No. 101-162, 103 Stat. 1020 (1989); Departments of Commerce, Justice & State, the Judiciary and Related Agencies, Pub. L. No. 101-515, -- Stat. -- (1990); Act of Oct. 28, 1991, Pub. L. No. 102-140, -- Stat. -- (1991).

clarifying the substantial relationship between the preference and its expected result, broader viewpoint diversity.

B. RESEARCH INDICATES THAT WOMEN ARE UNDERREPRESENTED IN THE BROADCAST MEDIA BOTH ON AND OFF SCREEN

White men continue to dominate the limited number of media outlets in the United States. A study commissioned by the FCC in 1982 found that women were majority owners of only 2.8% of television stations, 8.6% of AM radio stations, and 9.0% of FM radio stations.⁸ Men owned five times as many television stations, four times as many FM stations, and three times as many AM stations.⁹ The Congressional Research Service study found in 1988 that women of all races owned a majority interest in only 7.1% of 8,720 television and radio stations surveyed.¹⁰ Minority women are likely to represent even lower percentages than these, though they were not counted separately.¹¹

Women are also underrepresented on the air. In 1979, the Civil Rights Commission noted that 82.2% of all television news correspondents were white males, while only 9% were white

⁸ ERLA Group, Inc., Female Ownership of Broadcast Stations 45 (1982). [hereinafter ERLA Report].

⁹ Id. at 22.

¹⁰ Congressional Research Service, Minority Broadcast Station Ownership and Broadcast Programming: Is There A Nexus? 12 (1988). [hereinafter CRS Report].

¹¹ By comparison, Blacks of both sexes owned 1.9% of stations surveyed, Hispanics 1%, and Asians 0.2%. Id. at 11 (Fig. 3). As for minority women employees, 1991 EEO reports show only 2.9% of officials and managers are Black women, 0.6% Asian women, and 2% Hispanic women. FCC, 1990 Broadcast and Cable Employment Trend Report EEO Trend Report, at 3 (1991).

females, 7% were minority males, and none were minority females.¹² Overall, the Civil Rights Commission found a serious lack of diversity in and on television. Despite the FCC's laudable efforts, the situation has not improved dramatically over the last decade. A 1992 study by Women, Men, and Media found men reporting 86% of all television news stories on the three major networks over a sample period of a month.¹³ On these same news shows, only 21% of individuals interviewed were women.¹⁴ According to Eleanor Smeal, President of the Feminist Majority Foundation, only 3% of major news anchors are female.¹⁵

A third study of women in the television industry, conducted by the National Commission On Working Women, found similar numbers. After analyzing eighty entertainment programs aired during the spring of 1990, it concluded that "women continue to fare poorly on television -- both on screen and behind the

¹² United States Commission on Civil Rights, Window Dressing on the Set: An Update 25 (1979) [hereafter CCR Update]. See also Commission on Civil Rights, Window Dressing On The Set: Women and Minorities in Television (1977); Corporation for Public Broadcasting, Report of the Task Force on Women in Public Broadcasting, at 8, 11 (1975) (only one public television show specifically addressed "woman's issue;" only 3% of all station general managers were female).

¹³ Women, Men, and Media, Show Window or Window Dressing? Women in the News 7 (1992).

¹⁴ Id. at 9.

¹⁵ See also Muriel Cantor, Women and Diversity, Benton Foundation Report (1987) at 21-22 (citing similar numbers reported in 1984 by the Women's Media Project of the NOW Legal Defense & Education Fund).

camera..."¹⁶ According to its survey, women made up only 15% of producers, 9% of directors, and 25% of writers.¹⁷

As for the images of women appearing on-screen, the Commission found that almost all of the women portrayed were under 40, and that most were employed as clerical workers.¹⁸ Older women tended to play grandmothers and mothers, as contrasted to older men, whose roles embodied authority and power. Nearly all leading roles were played by men, and adolescent boys received much more attention than adolescent girls. The study concluded that no improvement could be expected until the numbers of women producers increased, and that "diverse workers behind the camera [are required] to capture a diverse viewing audience."¹⁹

Other analysts of television programming have also reported little diversity on the screen and few women in positions of power. Author Susan Faludi argues that positive role models for single and working women and coverage of women's issues were nearly absent from television screens during the last decade.

¹⁶ The National Commission On Working Women of Wider Opportunities for Women, What's Wrong With This Picture? The Status of Women On Screen and Behind the Camera in Entertainment Television 5 (1990) [hereafter WOW Study].

¹⁷ Interestingly, the newest and least-established network, Fox, employs the highest percentage of women in each of these categories. However, they tend to experience less exposure and job security than those at other networks. Id. at 6, 67.

¹⁸ Id. at 8,9 (analyzing all 555 characters appearing on the programs).

¹⁹ Id. at 67.

Faludi, Backlash, at 146-48 (1991). She concludes that male programmers tend to neglect or silence the ideas of their female counterparts, whom they outnumber ten to one, and notes that women creators tended to feature stronger female leads. Finally, she recounts that only two of thirty-three new programs offered in a recent season featured women who worked outside the home; "on the rest they were housewives, little girls, or invisible." Id. at 147.²⁰ Thus, it is clear that women's distinctive voices and views remain underrepresented on the air, as well as behind the scenes.

In broadcasting, as in the business world generally, this underrepresentation may reflect a phenomenon known as the "glass ceiling," which keeps women and minorities from rising to top executive and management levels. In 1991, the U.S. Department of Labor reported that only 6.6% of all executives in Fortune 1000 companies were women, and 2.6% were minorities.²¹ The vast majority of chief executive officers interviewed agreed that

²⁰ Faludi also notes the rarity of programs featuring strong independent women such as Murphy Brown, and Cagney and Lacey, and comments that women television characters are much more likely to be suburban housewives than single working women. Id. at 149-153, 159. Similar conclusions have been drawn by others. See Koza, Kiddie TV Study: "One Smurfette amid a Host of Smurfs", United Press International (July 14, 1982); National Commission on Working Women, Women Out of View: An Analysis of Female Characters on 1987-88 TV Programs, (1987); Davis, Portrayals of Women in Prime-Time Network Television: Some Demographic Characteristics, 23 Sex Roles 325-30 (1990) and Herbert, Study Charges Sexism in Women's Sports Coverage, L.A. Times, Aug. 30, 1990, at F2.

²¹ United States Department of Labor, A Report on the Glass Ceiling Initiative, 6 (1991).

women faced real barriers in rising to the top in their companies.²² In broadcasting, unlike the rest of corporate America, the Commission has the power to help shatter this glass ceiling. By using preferences to assist women and minorities to obtain new station license, the Commission can partially dismantle the barriers that these groups face and increase their numbers significantly.

C. EVIDENCE INDICATES THAT INCREASING FEMALE OWNERSHIP WILL INCREASE DIVERSITY BY REDUCING THIS UNDERREPRESENTATION AND ADDING WOMEN'S VOICES TO THE BROADCAST SPECTRUM

Increasing the numbers of female station owners and managers will help to ensure that women's distinct perspectives are reflected on the broadcast spectrum. Congress has specifically found that expanding female ownership "results in diversity of programming and improved service to minority and women audiences," and has "explicitly approved" the use of preferences to help reach that goal.²³

In the analogous area of minority preferences, the Supreme Court has deferred to Commission findings that "the viewing and

²² Id. at 18.

²³ S. Rep. No. 100-182, 100th Cong., 1st Sess. 76 (1987) (quoted in Metro Broadcasting, 110 Sup. Ct. at 3016; See also Minority Ownership of Broadcast Stations: Hearing Before the Subcomm. on Communications of the Senate Comm. on Commerce, 101st Cong., 1st Sess. at 3 (1989) (statement of Sen. Hollings); 135 Cong. Rec. H7644 (daily ed. Oct. 26, 1989) (banning expenditure of funds to weaken the policy); H.R. Rep. No. 97-765 (Conf. Rep.), 97th Cong., 2d Sess. 43 (1982), reprinted in 1982 U.S.C. C.A.N. 2288-89 (permitting lotteries) (women "significantly underrepresented" in license ownership; preferences needed to ensure "wider diversity of information sources").

listening public suffers when minorities are underrepresented among owners of television and radio stations" without requiring a high degree of proof. Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997, -- (1990) (citing Minority Ownership Task Force Report (1978)). Analogizing to its jury cases, the Court reasoned that a "fair cross section" of diverse content was more likely to result if minorities had access to the limited electromagnetic spectrum. As in the jury cases, where the effect of including minority views cannot be predicted in any given case, the Court accepted the Commission's presumption that the nexus exists:

it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news."²⁴

See also FCC v. Nat'l Cit. Comm for Broadcasting, 436 U.S. 775, 796-97 (1978) (diversity is "not easily defined let alone measured.").

As for the goal of the preference, the Metro majority clearly held that it was intended to encourage the expression of "varying perspectives," and sopecifically endorsed the Commission's efforts to reach this goal: "a broadcasting industry

²⁴ Id. at 3012, quoting TV 9, Inc. v. FCC, 495 F.2d 929, 938 (D.C.Cir. 1973) (emphasis in original). See also Winter Park Communications, Inc. v. FCC, 873 F.2d 347 (D.C. Cir. 1989); West Michigan Broadcasting Corp. v. FCC, 735 F.2d 601, 610-11 (D.C.Cir.1984), cert. denied 470 U.S. 1027 (1985); Garrett v. FCC, 513 F.2d 1056, 1063 (D.C. Cir. 1975) ('reasonable expectation' of diversity enough, no 'advance demonstration' needed); Mid-Florida Television Corp., 69 FCC 2d at 651; Minority Ownership of Broadcast Facilities, 68 FCC 2d 979, 981 (1978); NAACP v. FCC, 425 U.S. 662, 670 n.7 (1976); Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

with representative minority participation will produce more variation and diversity than will one whose ownership is drawn from a single racially and ethnically homogenous group." Metro, 110 S.Ct. at 3016-17. However, it refused to require any stereotypical formats or programs geared toward particular ethnic groups, instead defining the goal of diversity as the expression of a broad cross-section of views:

While we are under no illusion that members of a particular minority group share some cohesive, collective viewpoint, we believe it a legitimate inference for Congress and the Commission to draw that as more minorities gain ownership and policymaking roles in the media, varying perspectives will be more fairly represented on the airwaves.²⁵

Numerous studies support the conclusion of Congress and the Supreme Court that there is a nexus between ownership and diversity, and that that nexus is no less true for female licensees than for men of color. Unfortunately, the Lamprecht case examined only one study before invalidating the female preference on the grounds that stations owned by women did not target their programming sufficiently at women. Lamprecht, 958

²⁵ Metro, 110 S.Ct. at 3010, 3017-18 (citations omitted) (diversity may also include "selection of topics for news coverage," "editorial viewpoint[s]," and/or avoiding stereotypes). Accord, Spitzer, supra n. 5, at 330; Cantor, supra n. 15 (defining diversity as including both station ownership and program content) (citing Levin, Fact and Fancy in Television Regulation: An Economic Study of Policy Alternatives (1980)); Marilyn Fife, Impact of Minority Ownership on Minority Images in Local News, in Communications: A Key to Economic and Political Change, (O.H. Gandy, Jr. ed., 1986)) (black-owned stations not only offer more diverse views but also encourage white-owned competitors to diversify); Allen S. Hammond, IV, Diversity and Equal Protection in the Marketplace: The Metro Broadcasting Case in Context, 44 Ark. L.R. 1063, 1083-1085 (discussing nexus between majority-owned media and lack of diversity).

at -- (citing CRS Report). The dissent, on the other hand, found that the same report provided ample proof of the nexus between female ownership and diverse programming.²⁶ While there may be some merit to both these views, that study's most serious flaw is that it focused on entertainment formats, and failed to inquire to what extent female-owned stations incorporated women's viewpoints in their news and public affairs programming.²⁷

The fact that a radio station format may not be 100% "women-oriented" does not mean that the station as a whole does not include diverse points of view on the air.²⁸ In fact, a growing body of research supports the Commission's assumption that increasing female ownership will help increase diversity. As far back as 1978, the United States Commission on Civil Rights endorsed the female and minority preferences as an "unobtrusive,

²⁶ Lamprecht, 958 F.2d at 412-13 (Mikva, C.J., dissenting); CRS Report, supra n. 10, at title page ([T]here is a strong indication that minority and women station ownership result[s] in a greater degree of minority programming.") (emphasis added); id. at 44 ("a substantial percentage [of female-owned stations also] programs for Black and Hispanic audiences. Thirty-five percent of female-owned stations in the study aired programming specifically targeted to women, compared to only 28% of male-owned stations. Id. at 18 (Fig. 9A).

²⁷ The Commission has not concerned itself with format issues since the Supreme Court decision in FCC v. WNCN Listener's Guild, 450 U.S. 582 (1981). The CRS study is also problematic because it was heavily geared to radio stations (86% of the sample). Furthermore, it is now somewhat outdated.

²⁸ See, e.g., Spitzer, supra n. 5, at 333, arguing that a "subtle difference" may exist in programming presented by female-owned stations, even in identical formats, because gender differences in presentation may affect coverage of identical events. Accord, CRS Report supra note 10 at 40; Lamprecht, 958 F.2d at 414 (Mikva, C.J., dissenting).

effective, and constitutional way" to help diversify programming content.²⁹ See also Cantor, supra n. __, at 14 ("[I]f more women were to become station owners and more women were employed in decision-making and creative positions, either on or off the air, the portrayals of women would also differ."); Lamprecht, 958 F.2d at 414 (Mikva, C.J., dissenting) ("more female owner-managers will likely enhance the diversity within the existing formats . . .") (emphasis in original).

Perhaps because more women have joined the ranks of station owners, producers, and programmers, women's perspectives on world events are beginning to be heard on public affairs programming for general audiences. For example, in announcing a new all-female news/talk show to air on the Public Broadcasting System, cohost Nina Totenberg explained, "It's a known fact . . . that women's political discussions are often 'more serious' than men's because 'we're not always trying to say, 'Listen to meeeeeee!'"³⁰ Similarly, top-ranking women in the broadcast industry may "mainstream" issues of particular concern to many women into prime-time entertainment programming. Recent examples include programs focusing on unwed motherhood, work/family conflicts, menopause, and women's roles in Vietnam.³¹

²⁹ CCR Update supra n. 12, at 57-58.

³⁰ F. Shen, Forget the Girl Talk; An All-Women News Show Takes on the Guys, The Washington Post, April 2, 1992, at D1.

³¹ See, e.g. Can a Sitcom Change Society?, Newsweek, May 21, 1992, at A1; Networking Women, (March 13, 1989) at 48-54; Women at Work, newsletter of the National Commission on Working Women (Fall 1989); Amicus Brief of American Women in Radio and

A substantial and growing body of research in many other fields further supports the contention that many, if not all, women owner-managers will program somewhat differently than their male counterparts. For example, studies of women legislators at both the state and federal levels demonstrate that they pass more bills related to children, families, and social issues than most male legislators.³² Regardless of party affiliation, women representatives are much more likely to press issues such as domestic violence, day care, insurance coverage for mammography, sexual harassment, pay equity, and better treatment of rape victims than their male counterparts.³³ Studies of female city council members, mayors, judges, and appointed officials at both the state and federal levels revealed similar results.³⁴

Television, Inc. in Metro Broadcasting, 110 S.Ct. 2997 (1990), at 3.

³² See, e.g. Barry, Women of the House, The Washington Post Magazine, May 10, 1992, at 15, 30 (citing Congresswomen's support for women's health issues such as breast cancer research); Debra L. Dodson and Susan J. Carroll, Reshaping the Agenda: Women in State Legislatures, Center for the American Woman and Politics, Rutgers University (1991) (female legislators more likely to sponsor women's rights legislation, and had different policy agendas, priorities, and leadership styles).

³³ Id. at 4-5. Women legislators also listed "child care and other work issues for women" and equal employment policies among their top priorities. In addition, they noted "an increased tendency . . . to approach policy analysis, development and implementation with a special sensitivity to the potential impact on women workers, women clients or communities." See also Catherine M. Havens and Lynne M. Healy, Cabinet-Level Appointees in Connecticut: Women Making a Difference, in Debra L. Dodson, ed. Gender and Policymaking: Studies of Women in Office, Center for the American Woman and Politics, Rutgers University, 21, 25 (1991).

³⁴ Dodson, Introduction, supra n. 33 at 4-5.

In addition to their greater focus on "women's issues," research indicates that women legislators often approach other issues differently than their male counterparts, and also have a distinctive impact on the overall public policy agenda. For example, as the Post noted, "The most universally agreed-upon conclusion after [Professor Anita Hill testified in Clarence Thomas' Supreme Court confirmation hearings, was that] a woman on the committee would have made all the difference in the world."³⁵ Where both genders are equally interested in an issue, such as defense spending, the economy or the death penalty, women policy makers tend to view it differently and emphasize different aspects.³⁶

The so-called "gender gap" in public opinion polls and voting behavior also suggests that women licensees might view some public policy issues differently. Polls show that women overall are more likely to favor laws on gun control, environmental protection, restricting drugs, gambling, and pornography, programs to help the economically disadvantaged, and to achieve racial equality. They more often oppose military

³⁵ Barry, supra n. 32 at 19; Dodson & Carroll, supra n. 32 at 13.

³⁶ Dodson & Carroll, supra n. 32, at 14. Women legislators were "less convinced than their male colleagues of the private sector's ability to solve economic problems, more likely to oppose the death penalty and more likely to oppose construction of additional nuclear power plants to address their states' future energy needs." Id. Interestingly, the gender gaps on these issues were as large as on abortion rights.

intervention and the death penalty, and more frequently identify themselves as feminists than do men.³⁷

Studies of women on juries, as judges, and in other areas confirm the assumption that including women tends to broaden diversity and benefit the public at large, and agrees that hard, statistical proof is not required to reach that conclusion. The Supreme Court has reasoned that women must be included in jury pools because women bring "their own perspectives and values" to the process.³⁸ Similarly, many female judges agree that they bring "unique perspectives and life experiences different from

³⁷ Carroll and Dodson, Introduction, in Dodson, supra n. 33, at 1, 5, citing "The Gender Gap in Presidential Voting: 1980-1988," Center for the American Woman and Politics, Rutgers University (1989) (noting that 6 to 9 percent fewer women than men voted for Republican presidential candidates in 1980, 1984, and 1988).

³⁸ Taylor v. Louisiana, 419 U.S. 522, 531-32 & n. 12 (1975), quoting Ballard v. United States, 329 U.S. 187, 193-194 (1946):

[I]t is not enough to say that women when sitting as jurors neither act nor tend to act as a class. . . . The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded.

See also Peters v. Kiff, 407 U.S. 493 (1973); United States v. DeGross, 930 F.2d 695 (9th Cir. 1990), aff'd en banc, 1992 U.S. App. LEXIS 5645 (April 2, 1992); Shirley Sagawa, Batson v. Kentucky: Will it Keep Women on the Jury, 3 Berkeley Women's Law Journal 14, 38 (1987) (arguing that the inclusion of women on juries benefits the entire justice system, as well as litigants and the women themselves.)

those of men," to the bench, which otherwise would go unrepresented.³⁹ Because research indicates that judges' backgrounds tend to color their view of issues and litigants, whatever their race or sex, some analysts have found that diversifying the formerly all-male judiciary has begun to ensure fairer, more balanced decision-making.⁴⁰ Contemporary social science researchers also support the expectation that women station owners may have a distinctive impact, based on

³⁹ Elaine Martin, Judicial Gender and Judicial Choices, in Dodson, supra n. 33 at 51, 53. "Th[e] connection between personal experiences, the attitudes developed from those experiences and their subsequent impact on judicial behavior is the same for women as for men, but with a significant twist. Women's experiences are different as a consequence of their gender, leading to potential differences in attitudes with regard to gender issues."

⁴⁰ See, e.g., Carl Tobias, Commentary: The Gender Gap on the Federal Bench, 19 Hofstra L. Rev. 171 (1990); Elena F.Rand, Women Judges Making a Difference (1990), Internship Program, Woodrow Wilson School of Public Affairs, Princeton University; Sheila Weller, Taking the Law into Her Own Hands, Redbook, June 1992, at 94.